HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.553 of 2007

Between:

Y.V. Subramanya Kumar

... Appellant

And

Southern Power Distribution Company of AP Ltd.,
Represented by its Chairman & Managing Director,
Chittoor District and two others

... Respondents

::JUDGMENT::

Counsel for the appellant : Shri A.K. Jayaprakash Rao

Counsel for the respondents : Shri G. Vidyasagar

July 5, 2007

Per G.S. Singhvi, CJ

Whether the doctrine of equality enshrined in Article 14 can be invoked by the High Court for issue of a mandamus to the State or its instrumentalities/agencies or any public authority to pass an illegal order or commit an illegality on the premise that in a similar case, such an illegal order has been passed or illegality has been committed by the State etc. is the question which arises for determination in this appeal filed by Shri Y.V. Subramanya Kumar against order dated 2.1.2007 passed by the learned Single Judge in Writ Petition No.24158 of 2007.

The appellant worked as a labour under various contractors, who were awarded different works by the erstwhile Andhra Pradesh State Electricity Board (for short, 'the Board').

In the year 1997, he along with some others filed Writ Petition No.23578 of 1997 for issue of a mandamus to the Board to absorb them in the regular establishment in accordance with the policy contained in B.P.Ms.No.36, dated 18.5.1997. The same was disposed of by the learned Single Judge on 18.9.1997 with a direction to the respondents to consider the cases of the petitioners in accordance with the policy framed by the Board. Thereafter, the appellant was interviewed by the Selection Committee, but his candidature was rejected on the ground that all the vacancies of Lineman had been exhausted and he was not eligible for appointment as Lower Division Clerk (LDC). To this effect, communication dated 14.8.2002 was sent by the Superintendent Engineer (Operation Circle), Southern Power Distribution Company of Andhra Pradesh Limited, Cuddapah (respondent No.3 herein) to the Chief General Manager, Operation/APSPDCL, Tirupathi (respondent No.2 herein). For the sake of convenient reference, that communication is reproduced below:

SOUTHERN POWER DISTRIBUTION COMPANY OF A.P. LTD.
VIDYUT BHAVAN ::: CUDDAPAH – 4

From:
The Superintending Engineer,
Operation Circle/APSPDCL
CUDDAPAH 4

To
The Chief General Manager,
Operation/APSPDCL,
TIRUPATI

Lr.No.SE/O/CDP/Adm/C2/7.135/D/No.1807/02, dt.14.8.02.

Sir,

Sub: Estt. APSPDCL – Appointment of LDC under 50% vacancies filling-up with Contract Labours – Reg.

Ref: 1) Memo No.CGM/Opn./DS/AS.II/AI/Adm/D.No.1326/02, dt.29.7.02.

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Adverting to the reference cited, it is to inform that Sri Y.V. Subramanya Kumar who worked as Contract Labour in the Circle has attended to the interview on 28.10.97 in terms of B.P.Ms.No.36/dt.18.5.97. As on the date of interview, he has produced his qualification certificate as Intermediate. As per the qualifications, his case has been considered for the post of Jr.Lineman and could not be appointed, since 50% vacancies existing as on 18.5.97 in the cadre of Jr. Lineman have been exhausted by filling-up with eligible Ex-Casual Labours and Village Electricity Workers as per the order of preference.

Sri Y.V. Subramanya Kumar acquired graduation in Bachelor of Arts subsequently in the year 2001 and represented to this office for appointment as LDC. But, as per the guidelines issued for filling-up of 50% vacancies in terms of B.P.Ms.No.36/dt.18.5.97, the qualification as on the date of interview has to be considered.

Further, it is to inform that the 50% vacancies existing as on 18.5.97 in the cadre of LDC have already been exhausted. Hence, his case is not considered for the post of LDC.

Sd/-
Superintending Engineer,
Operation:: Cuddapah

The appellant questioned the above noted decision in Writ Petition No.24158 of 2002 by contending that refusal of the non-petitioners to absorb him in the regular establishment is ultra vires the policy contained in B.P.Ms.No.36, dated 18.5.1997 and is also violative of Articles 14 and 16 of the Constitution. He pleaded that by having worked as contract labour from 1988, he had acquired a right to be regularly appointed, but the concerned authority arbitrarily rejected his claim despite the fact that several other persons, who did not possess the requisite qualification on the cut-off date, have been absorbed and, in this manner, his right to equality has been violated.

The learned Single Judge dismissed the writ petition by observing that the appellant did not possess the prescribed qualification on the date of initial engagement and that the subsequent acquisition of qualification does not entitle him to claim absorption as of right. This is evinced from the following extracts of the order under appeal:

> "Since it is the admitted case of the petitioners that they did not possess the requisite qualification as on the date of their initial

engagement and that they acquired the requisite qualifications subsequent to their initial engagement, having regard to Condition No.5(b) of B.P. Ms. No.36, dated 18.05.1997, which states that no relaxation in educational or other relevant technical qualifications can be given, no exception can be taken to the action of the respondents in rejecting the cases of the petitioners for absorption/selection in the posts in which they worked with the contractors. In this context it would be appropriate to refer to the judgment of the apex Court in Civil Appeal No.3215 of 2002 and batch, dated 18.04.2002, wherein the apex Court having considered the question of grant of relaxation of prescribed qualifications, answered the same in the negative, holding as follows:

> "In our view, in the petitions before the High Court there was no question of considering public policy and the discussion on the law was totally besides the point involved in the matter. Limited issue was – whether before regularization of service of employees, the Board was bound to follow the eligibility conditions laid down in its proceedings dated 18.05.1997 and 31.12.1997. Benefit of regularization which was conferred on the employees solely depended upon eligibility of conditions including the age limit prescribed under the statutory regulations. The statutory regulations provide that there shall be no relaxation of age. In cases, where the Board has committed mistake in engaging under-age casual employees or has permitted the contractor to do so would not confer any right on such employees for being regularized on the basis of BPMS dated 18.05.1997.
>
> In this view of the matter, the judgment rendered by the High Court cannot be sustained and is, therefore, set aside.
>
> However, considering the fact that the respondents/casual employees/employees of the contractor/junior linemen are in service for more than 15 years, we do not think that this would be a fit case for disturbing their appointments made in pursuance of the order passed by the High Court.
>
> Ordered accordingly. Appeals stand disposed of."

When the Board Service Regulations prescribes a particular qualification, the candidates seeking absorption/ selection should possess such qualification, and this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot relax the prescribed qualifications, if done it would amount to rewriting the service conditions.

Shri A.K. Jayaprakash Rao lamented that the learned Single

Judge dismissed the writ petition along with batch of other cases without critically examining his client's plea of violation of Articles 14 and 16 of the Constitution. Learned counsel invited our attention to representation dated 16.11.2002 made by the appellant to show that at least one of the contract labour, namely, Shri P. Anantharama Sarma was appointed as Lower Division Clerk despite the fact that he did not possess the qualification of graduation as on 18.5.1997 and three employees viz., Shri S. Penchalaiah, Shri G. Nagaraju and Shri M. Devadanam were appointed as Sub-Engineer and Typist respectively despite the fact that 50% of the vacancies earmarked in terms of policy dated 18.5.1997 had been exhausted and argued that even if the appointment of Shri P. Anantharama Sarma and three other persons were contrary to the policy contained in B.P.Ms.No. 36 dated 18.5.1997, the learned Single Judge should have invoked the doctrine of equality and ordained the respondents to appoint the appellant as Lower Division Clerk or at least as Junior Lineman.

In our opinion, there is no merit whatsoever in the submissions of the learned counsel. B.P.Ms.No.36, dated 18.5.1997, which constitutes the bedrock of the appellant's claim for absorption in the regular establishment, reads as under:

ANDHRA PRADESH STATE ELECTRICITY BOARD:
VIDYUT SOUDHA ::: HYDERABAD

Estt. – APSE BOARD – filling up of 50% existing vacancies in initial recruitment cadres be Ex-casual labour who obtained court orders and Village Electricity Workers – ORDERS – Issued.

B.P. (P & G. Per) Ms.No.36, Dated: 18-5-1997

Read the following :-

1. Minutes of Joint Meeting dated 5-3-96 with the three Recognised Unions.
2. B.P. (P & G. Per) Ms.No.228, dt.27-1-97
3. B.P. (P & G. Per) Ms.No.17, dt.22-4-97
4. Gvoernment's D.O. Lr.No.21207/Ser.A.2193 E. Deptt., dated 18-5-1997

PROCEEDINGS:

In the Joint Meeting held on 5-3-96 with the three recognized unions, it was agreed, inter alia, to fill up 50% of the vacancies of the following initial recruitment cadres on receipt of permission from Government, by considering the cases of Ex-casual labour covered by court cases who have to be given second chance, contract labour and Village Electricity Workers.

JLM/JPA/JA/LDC/RC/Typist/Sub-Engineers

2. In the reference second cited, certain guidelines have been issued to consider these cases for appointment against 50% vacancies in the above mentioned categories.

3. The A.P.S.E. Board has re-examined the issue in the light of the orders issued by the Government in the reference last cited and also the developments that took place with reference to the abolition of 33 categories of contract labour in Generating Stations in G.O.Ms.No.41, Labour Department, dt.23-9-96 and decided to consider the cases of Ex-casual labour covered by court cases who have to be given second chance, Village Electricity Workers and Contract Labour not covered by 33 abolished categories in Generating Stations, against 50% of existing vacancies in the above initial recruitment cadres.

4. The A.P.S.E. Board accordingly issues the following orders in supersession of the orders issued in the references 2 and 3rd cited.

i) Ex-Casual Labour:

The Ex-Casual labour who were already interviewed but failed in the test and given second chance and also obtained interim orders from the High Court for consideration are only eligible for selection for appointment against 50% of the existing vacancies in accordance with the guidelines contained in Memo No.DP/DM-I./A3/1138/95-1, dt.26.9.1985 read with Memo No.D/DM-I/C2/2519/93 dt.14.9.93.

ii) Village Electricity Workers:

In terms of the agreement dated 5.3.96, the cases of the village Electricity Workers shall be considered for selection and appointment against 50% of the existing vacancies subject to the condition that they are not eligible to derive any benefit for their earlier services and on selection they will be appointed as fresh candidates in A.P.S.E. Board.

iii) Contract Labour:

The Contract labour other than those engaged in 33 abolished categories in generating stations shall be considered for selection and appointment against 50% existing vacancies.

5. The guidelines for selection of the candidates from the above categories shall be as follows:

a) Age: Age shall be reckoned as per Board's service regulations in force at the time of their first engagement. There shall be no relaxation of age.

b) Educational Qualifications: Educational Qualifications shall be as per Board's service regulations in force at the time of their first engagement. There shall be no relaxation of educational qualifications or other relevant technical qualifications with are prescribed in the service regulations for such appointment.

c) Seniority: The Seniority shall be reckoned based on the total period of service rendered by the respective candidates in the Unit as per muster rolls/wage register or as per the records maintained under the contract labour (Regulation and Abolition) Act, 1970. Separate seniority list shall be prepared for each category as per their eligibility. The continuous period of working shall be taken for purpose of reckoning in seniority in respect of village Electricity workers.

d) Rules of Reservation: The rule of reservation as per roster in terms of Reg.22 of A.P.S.E.B. Service Regulation Part-II shall be strictly followed.

e) Selection Committee:

i. Director personnel.
ii. Concerned Chief Engineer from Generating Station/Zone
iii. Deputy Secretary (Personnel)
iv. Director (Industrial Relations) –Member Convenor.

6. The Selection Committee constituted above shall select the candidates suitable for appointment for each category and communicate the lists to the concerned appointing authorities. They shall appoint the selected candidates depending upon vacancies available duly adopting the rule of reservations in terms of Reg.22 of A.P.S.E. Board Service Regulations Part-II."

A bare reading of Clause 5 (b) of the above reproduced policy makes it clear that the educational qualifications possessed by the contract labour etc. as on the date of initial engagement were to be considered for absorption in the regular establishment. This necessarily implies that the qualifications acquired after the cut-off date were not relevant for determining the eligibility and entitlement of the contract labour etc. for appointment against regular vacancy.

There is no dispute between the parties that the educational qualification prescribed in the Board's Service Regulations, which were in force at the time of initial engagement of the appellant was 'graduation'. It is also not in dispute that at the time of initial engagement in 1988, the appellant did not possess the said qualification. Therefore, the view taken by the learned Single Judge, which also finds ample support from judgment dated 18.4.2002 of the Supreme Court in Civil Appeal No.3215 of 2002, that the appellant was not eligible to be considered for selection and absorption as LDC cannot be termed as erroneous.

The appellant's claim for appointment as Junior Lineman deserves to be rejected on the short ground that all the 50% vacancies in that cadre had already been filled. If, at this stage, the Court commands the respondents to absorb the petitioner as Junior Lineman, then they may have to dispense with the service of one of the employees whose services had been regularised in terms of the policy contained in B.P.Ms.No.36, dated 18.5.1997 and we do not see any reason to adopt that course ignoring the fact that none of the absorbed employee was a party to the writ petition. We also do not find any valid reason or justification to issue a mandamus to the respondents to create additional or supernumerary post for accommodating the appellant because that would necessarily result in amendment of the policy contained in B.P.Ms.No.36, dated 18.5.1997.

The plea of discrimination raised by the appellant cannot be accepted for the simple reason that Article 14 does not comprehend negative equality.

In **Chandigarh Administration v. Jagjit Singh**[1], the Supreme Court considered the question whether the High Court was justified in directing the appellant to restore the allotment of plot made

in favour of the respondent, who had lost two rounds of litigation, simply because in another case such restoration had been granted by the administration even after dismissal of the writ petition filed against cancellation of the allotment, and answered the same in negative. The facts of that case were that the respondents, who had given the highest bid for 338 sq. yds plot in Section 31A, Chandigarh defaulted in paying the price in accordance with the terms and conditions of allotment. After giving him opportunity of showing cause, the Estate Officer cancelled the lease of the plot. The appeal and the revision filed by him were dismissed by the Chief Administrator and

Chief Commissioner, Chandigarh respectively. Thereafter, the respondent applied for refund of the amount deposited by him. His request was accepted and the entire amount paid by him was refunded. He then filed a petition for review of the order passed by the Chief Commissioner, which was dismissed. However, the officer concerned entertained the second review and directed that the plot be restored to the respondent. The latter did not avail benefit of this unusual order and started litigation by filing writ petition in the High Court, which was dismissed on March 18, 1991. Thereafter, the respondent again approached the Estate Officer with the request to settle his case in accordance with the policy of the Government to restore the plots to the defaulters by charging forfeiture amount of 5%. His request was rejected by the Estate Officer. He then filed another writ petition before the High Court, which was allowed only on the ground that in another case pertaining to Smt. Prakash Rani, Administrator had restored the plot even after her writ petition was dismissed by the High Court. The Chandigarh Administration challenged the order of the High Court by filing petition for special leave to appeal. While reversing the order of the High Court, their Lordships of the Supreme Court observed as under:-

> "We are of the opinion that the basis or the principle, if it be called one, on which the writ petition has been allowed by the High

Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law – but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the Court nor is his case. In our considered opinion, such a course – barring exceptional situations – would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an

order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises)."

In **Gursharan Singh v. New Delhi Municipal Committee**[2], the Supreme Court refused to invoke Article 14 of the Constitution of India for giving relief to the appellant and observed:

"Under Article 14 guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of the Supreme Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law."

In **Secy., Jaipur Development Authority v. Daulat Mal Jain**[3], the Supreme Court held as under:

"The illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalized. In other words, judicial process cannot be abused to perpetuate the illegalities. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead,

nor the Court can countenance that benefit had from infraction of law and must be allowed to be retained. One illegality cannot be compounded by permitting similar illegal or illegitimate or ultra vires acts."

In **State of Haryana v. Ram Kumar Mann**[4], the Supreme Court ruled that the High Court was not right in issuing a mandamus to the State to allow the petitioner to withdraw his resignation merely because in another case such a course was adopted. Some of the observations made in that case, which are quite instructive, are extracted below:

> "The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Section 14 for reinstatement? The answer is obviously 'No'. In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right."

In **Faridabad CT. Scan Centre v. D.G. Health Services**[5], the three Judges Bench of the Supreme Court over-ruled the earlier decision of the two Judge Bench and held:

> "Article 14 cannot be invoked in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of Article 14 on the basis that such wrong orders were earlier passed in favour of some other persons and that, therefore,

there will be discrimination against others if correct orders are passed against them. The benefit of the exemption notification, in the present case, cannot, therefore, be extended to the petitioner on the ground that such benefit has been wrongly extended to others."

In **State of Bihar v. Kameshwar Prasad Singh**[6], the Supreme Court held that an erroneous judgment rendered by the High Court in the matter of seniority of an employee cannot justify a similar direction in case of another employee and observed:

> "The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits."

In **Union of India v. International Trading Co.**[7], the Supreme Court ruled that Article 14 does not comprehend negative equality and observed:

> "What remains now to be considered, is the effect of permission granted to the thirty two vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as the thirty two vessels are concerned, but it cannot come to the aid of the respondents. It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality."

The above noted propositions have been reiterated and followed in **Style (Dress land) v. Union Territory, Chandigarh**[8], **Ekta Sakthi Foundation v. Govt. of NCT of Delhi**[9] and **National Institute of Technology v. Chandra Sekhar Chaudhary**[10].

In view of the law laid down by the Supreme Court, we cannot issue a mandamus to the respondents to absorb the appellant despite the fact that he was not qualified for the post of LDC. The mere fact that some other person, who did not possess the prescribed qualification at the time of appointment, was considered and absorbed cannot enure to the advantage of the appellant. In our considered view, any direction by the Court to the respondents to absorb the appellant as LDC despite the fact that he did not possess the qualification of graduation at the time of initial engagement would amount to compelling the respondents to act in violation of the policy contained in B.P.Ms.No.36, dated 18.5.1997. To put it differently, it would amount to issue of a mandamus for enforcing negative equality, which is clearly impermissible.

No other point has been urged.

In the result, the appeal is dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

July 5, 2007

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Note:
LR copy be marked.
(By order)
svs

[1] AIR 1995 SC 705

[2] (1996) 2 SCC 459

[3] (1997) 1 SCC 35

[4] (1997) 3 SCC 321

[5] (1997) 7 SCC 752

[6] (2000) 9 SCC 94

[7] (2003) 5 SCC 437

[8] (1999) 7 SCC 89

[9] (2006) 10 SCC 337

[10] (2007) 1 SCC 93